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District of Columbia
Office of the State Superintendent of Education

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Confidential

STUDENT[1], by and through his Parent Petitioners, v. School A (DC Public Charter School) Respondent. Case	HEARING OFFICER'S DETERMINATION Hearing Date: October 7, 2010 <u>Representatives:</u> Counsel for Petitioners: Darnell L. Henderson, Esq. 1220 L Street NW Suite 700 Washington, DC 20005 Counsel for DCPS: Lauren E. Baum, Esq. 3573 Warder Street, NW Washington, DC 20010 <u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u>

[1] Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* ("IDEA"), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004*, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5E. The Due Process Hearing was convened October 7, 2010, at the OSSE Student Hearing Office 810 First Street, NW, Washington, DC 20003, in Hearing Room 2009.

BACKGROUND:

Student or "the student" is age During school year ("SY") 2009-2010 the student was in the seventh grade and attended a public charter school in the District of Columbia hereinafter referred to as School A. School A is its own local educational agency ("LEA"). Petitioner alleges in the complaint that School A, inter alia, failed to provide the student the full measure of prescribed services in his individualized education program ("IEP"), failed to review the student's most recent evaluations and failed make a determination of whether the student was eligible for extended school year ("ESY") services.

On September 10, 2010, Petitioner filed a second due process complaint (Case alleging Respondent School A had failed to maintain the student's placement at School A in violation of the "stay-put" provisions of IDEA pending the adjudication of the due process complaint filed September 7, 2010. The parties waived resolution on both complaints.

Petitioner seeks as relief: (1) a finding that School A denied the student a FAPE, (2) reinstatement and of the student at School A, (3) and order that School A convene an IEP meeting to review the student's evaluations and update the student's IEP, and (4) School A funding of compensatory education to the student.

On September 20, 2010, Respondent's counsel filed a motion requesting that the two complaints be consolidated. Petitioner's counsel agreed to the consolidation. The pre-hearing conference was conducted September 20, 2010.[2] This Hearing Officer granted Respondent's motion to consolidate in the pre-hearing order in Case dated October 1, 2010. Therefore, the

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[2] Based upon discussion between the parties and the Hearing Officer during the pre-hearing conference the parties were directed by the Hearing Officer to brief the following issues prior to hearing:

1. Does the continued enrollment of a child with a disability in a D.C. public charter school ("PCS") require re-enrollment each year such that the student's school location can be legally changed from the PCS to his or her home school by the failure of a parent to timely meet the reenrollment standards and/or procedures of the LEA (PCS) and/or SEA.

2. Do the school re-enrollment procedures apply differently to a child with a disability than any other PCS student?

complaint filed September 10, 2010, by Petitioner (Case was dismissed based on the consolidation.[3]

Respondent asserted there was an IEP meeting convened on May 13, 2010, which the parent attended. The parent did not agree proposed action of the rest of the team and wanted to obtain the assistance of an advocate. The meeting was to be reconvened but did not after several unsuccessful attempts to invite the parent and reconvene the meeting. Respondent asserts the student is not entitled to any "stay put" rights at School A as the parent failed to re-enroll the student for the 2010-2011 school year by the required time frame and the "slots" for eighth grade had been filled by the time she attempted to enroll the student. Thus, the student was not registered at School A for the 2010-2011 school year. In addition, Respondent asserts that the student was also not entitled to "stay put" because at the time of the complaint was filed the student was enrolled in another school. Respondent denies it violated any of the student's and/or parent's rights under IDEA and denies the student has been denied a FAPE.

ISSUE(S): [4]

The issues alleged in the complaint are: (1) Whether Respondent School A denied the student a FAPE by failing implement the student's IEP as written? [5] (2) Whether Respondent denied the student a FAPE by failing to review and/or revise the student's IEP as needed after new evaluations (April 2010 psycho-educational and clinical psychological)? (3) Whether Respondent denied the student a FAPE by failing to appropriately determine a new placement for the student at the end of the 2009-2010 school year? (4) Whether Respondent denied the student a FAPE by failing to allow the parent meaningful participation in the placement/program decision for the 2010-2011 school year? (5) Whether Respondent denied the student a FAPE by failing to determine if the student was eligible for Extended School Year ("ESY") services for summer 2010? (6) Whether Respondent denied the student a FAPE by failing to comply with the "stay put" request and allow the student to attend School A for the 2010-2011 school year during the pendency of the complaint? and (7) If the denial(s) of FAPE is/are proved by Petitioner is the student entitled to compensatory education consistent with standards of *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005).

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[3] The issue alleged in both complaints are addressed and resolved in this Hearing Officer's Determination and Order ("HOD").

[4] The alleged violation(s) and/or issue(s) raised in the complaint may not directly correspond to the issue(s) outlined here. However, the parties agreed to issue(s) listed here as the issue(s) to be adjudicated. The complaint alleged Respondent had not provided Petitioner the student's educational records. The educational records were provided after the complaint was filed. Because there was no further remedy the Hearing Officer could offer the Hearing Officer dismissed that claim.

[5] Petitioner asserted the student's IEP was not implemented as written because there was allegedly no evidence the student was making progress toward his IEP goals and his progress reports conflict with the actual grades the student was receiving on his report. The Hearing Officer concluded and directed in the PHO that the issue to be adjudicated was whether the IEP was implemented as written – were the services delivered by School A as the IEP including its goals were written?

RELEVANT EVIDENCE CONSIDERED:

The Hearing Officer considered the testimony of the witness(es), the documents submitted in the parties' disclosures (Petitioner's Exhibits 1- 32 and Respondent's (LEA's) Exhibits1-11) which were admitted into the record. In addition, the Hearing Officer considered the legal arguments made in the parties briefs filed with the Hearing Officer October 1, 2010.

FINDINGS OF FACT:

1. The student is years old and resides in the District of Columbia with his parent(s), (hereinafter "Petitioner" or "Parent"). During SY 2009-10 the student attended School A in the grade. (Petitioner's Exhibit 7-1[6])

2. The student has been determined to be a child with a disability in need of special education and related services under IDEA, with disability classification of emotional disturbance ("ED"). (Petitioner's Exhibit 7-1)

3. Prior to attending School A, the student attended School B, another public charter school located in the District of Columbia during SY 2008-2009 in the grade. The student did not qualify for ESY services following his grade year at School B. (Student's testimony, Petitioner Exhibit 12-2, Respondent's Exhibit 1-1)

4. The student's most recent IEP was developed September 30, 2009, while he was attending School A. The IEP prescribed the following weekly services: 15 hours of specialized instruction and 45 minutes of behavioral support services. (Petitioner's Exhibit 7-5)

5. The parent attended the September 30, 2009, IEP meeting. In addition to the parent the participants of the meeting included School A's social worker and two of the student's teachers, one of whom was a special education teacher. The team reviewed the student's Woodcock Johnson scores. (Petitioner's Exhibits 8-1, and 10)

6. The student's Woodcock Johnson scores from September 4, 2009, were: Broad Reading score of 88 (percentile rank ("PR") 22, grade equivalence ("GE") 4.4), Broad Math score of 91 (PR 27 - GE 5.1), Broad Written Language score of 94 (PR 35 - GE 5.5). (Petitioner's Exhibit 10-1)

7. On September 30, 3009, the team members discussed the student's attendance problems and the impact they were having on his educational performance due to missed classroom instruction. The team determined that although the student's IEP included a behavior intervention plan that was developed at his pervious school the student had not been displaying any of the identified behaviors since attending School A. The team determined it was too early to determine if the student would be eligible for ESY services. (Petitioner's Exhibit 8-1,2)

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[6] The second number following the exhibit number denotes the page of the exhibit from which the fact is extracted.

8. As a part of the student triennial evaluations School A conducted a psycho-educational and clinical re-evaluation of the student. The evaluation was conducted by Samatntha Madhosingh, Psy.D.[7] The evaluation revealed the student had a full scale IQ of 90 in the average range. The student's academic achievement as assessed by the Wechsler Individual Achievement Test 2nd Edition (WIAT-II) revealed a Word Reading score of 82 (PR 12 – GE 4.6), Reading Comprehension score of 101 (PR 53 – GE 12.8), Psuedo-word Decoding score of 84 (PR 14 – GE 2.9); Numerical Operations score of 83 (PE - 13 GE 5.2) , Math Reasoning score of 91 (PR -27 - GE 6.2) , Math Composite score of 85 (PE 16). Spelling score of 82 (PR 12 GE 3.8), Writing Expression score of 95 (PR 37 – GE- 12.0), Composite Written Language score of 87 (PR 19). As a result of her findings Dr. Madhosingh diagnosed the student with a Learning Disorder (Not Otherwise Specified (NOS). (Petitioner's Exhibit 12-7)

9. During SY 2009-2010 at School A the student was provided special education services in an inclusion model and the related services of counseling. The student received all services prescribed in his IEP and the only services missed were on days he was absent or tardy and those instances the missed services were made up at other times. Service logs of the services provided the student are maintained by the school but were not presented at the hearing. testimony)

10. The student had difficulty with his school attendance often because of illness. When he was in his general education classroom he would have the assistance of a special education teacher. However, he believed he often did not receive his counseling services because he did not know he should leave class and go to the service provider unless the she sent another student to get him. (Student's testimony, Respondent's Exhibit 11-1)

11. The student's special education progress reports state that the student was regressing the in the fourth quarter of the school year in the area of social emotional goals, but for the most part was progressing in his academic goals. (Respondent's Exhibit 10)

12. On May 13, 2010, School A convened an IEP meeting to review the student's triennial evaluation. The student's parents participated in the meeting. In addition to the parents the team members included the student's English teacher, science teacher, the psychologist who conducted the re-evaluation and School A's special education coordinator, (Petitioner's Exhibits 9-1 & 12)

13. The IEP team members commented on the student's improved school attendance but stated the student often did not turn in class assignments. Dr. Madhosingh concluded based on her evaluation that the student did not meet the criteria for the ED classification. As result of the student's reevaluation and Dr. Madhosingh's recommendations the members of the team, except the parents, were of the opinion the student's disability

[7] The evaluation consisted of the following assessments: Berry Developmental Test of Visual motor Integration (VMI), Achenbach Your Self-Report for Ages 11-18 (YSR), Human Figure Drawings, Roberts Apperception Test, and Milton Pre-Adolescent Clinical Inventory (MPACI). The evaluator also reviewed the student's educational records and previous evaluations.

classification should be amended to specific learning disability ("SLD"). Petitioner's Exhibit 9-2)

14. The parents disagreed with the this determination and requested that before the student's IEP was changed that the parents be allowed to obtain and advocate to assist in the IEP review and revision process. (Parent's testimony, Petitioner's Exhibit 9-2)

15. Because the meeting was not concluded the team did not complete the revision of the student's IEP and did not discuss the student's need for ESY services. The student's case manager at School A was instructed by the school's special education coordinator to telephone the parent and attempt to reschedule the student's IEP meeting. Several unsuccessful attempts were made to contact the parent but she was not reached. testimony)

16. Consequently, the student's IEP meeting was not reconvened prior to the end of SY 2009-2010. No attempts were made by the special education staff at School A to reconvene the meeting after the end of the school year because of the parent's expressed intention at the May 13, 2010, meeting not to re-enroll the student at School A for SY 2010-2011. testimony)

17. School A began announcing the process and deadlines for re-enrollment for the 2010-2011 school year in December 2009. Notice of the process and deadlines included: announcements at town hall meetings hosted school, announcements at parent information nights, phone calls made to families enrolled at School A, Emails sent to parents with students enrolled at School A. On January 11, 2010, School A sent a letter home to all parents (one copy by mail and one with student) outlining the enrollment process and relevant deadlines. testimony)

18. April 27, 2010, was the initial reenrollment deadline for students in the seventh grade who intended to return in SY 2010-2011 and the make up date was May 1, 2010. The reenrollment is first come first served. If the attending students (families) did not submit paperwork by the deadline then non-attending families were eligible for enrollment. testimony)

19. On June 1, 2010, the parent filled out all the required re-enrollment documentation for the student to be reenrolled at School A for SY 2010-2011. However, the parent was not informed at the time that the student was enrolled at School A for the next school year SY 2010-2011. testimony)

20. There was no enrollment documentation filed for the student prior to the required deadline for reenrollment. By the time the parent had submitted the reenrollment all the student slots for the eighth grade at School A for SY 2010-2011 had been filled. The student was then put on a waiting list. testimony)

21. The student attended School A for summer school 2010; however, he did not receive ESY services. The student took three courses in summer school 2010: grade English,

Math 11 and Social Studies 7. The student received the grade of "F" in Math, grade of "C+" English 7, and no grade for Social Studies 7. testimony, Petitioner's Exhibit 22)

22. The notice on the student's summer report card noted that reenrollment documentation needed to be submitted by August 15, 2010. The notice on the report card also stated that attendance of summer school did not guarantee readmission at School A for the next school year (SY 2010-2011). (Petitioner's Exhibit 22)

23. At the start of SY 2010-2011 the student went to School A for the first day of school but was told that he was not enrolled there and the he would have to go to his neighborhood school. The parent took to the student to School C a DCPS school and enrolled the student. (Parent's testimony)

CONCLUSIONS OF LAW:

Pursuant to IDEIA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEIA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.

Pursuant to 5 DCMR 3030.3 the burden of proof is the responsibility of the party seeking relief. [8] *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case the student/parent is seeking relief and has the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

Issue (1): Whether Respondent denied the student a FAPE by failing implement the student's IEP as written? Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence.

34 C.F.R. § 300.17 provides that a free appropriate public education or FAPE means special education and related services that-- (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324.

[8] Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and /or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

Petitioner asserted the student was making little progress toward his IEP goals and his poor grades evidenced the student was not being provided the special education services. However, credibly testified the student was receiving specialized instruction and counseling services in the quantity of service hours the IEP prescribed. The student testified regarding the services he received and he acknowledged there were special education teachers who assisted him in his general education classes. Although he testified that he was unsure of how many days or hours the teacher would be in class, he did not seem to be certain how many hours the teachers were to be there such that his testimony was more credible than testimony. There was insufficient evidence presented by Petitioner that services in the student's IEP were not being provided the student at School A. Consequently, this Hearing Officer could not conclude based on the evidence that Petitioner had met the burden of persuasion with regard to the student's specialized instruction services.

The Hearing Officer found the student's testimony with regard to his behavioral support (counseling) services at bit more credible. He clearly stated that he often missed the services as he was not aware that he should seek the counselor out for services rather than the counsel seeking him. Respondent did not present services logs as evidence the services were provided to refute the student's testimony in this regard. However, still it was unclear from the student's testimony the amount of counseling he missed and further it was insufficient evidence of harm to the student for any of the missed services.

Under the law of the D.C. Circuit, a procedural violation of the IDEA is actionable only if it "affected the student's *substantive* rights" -- that is, only if the procedural violation led to a substantive violation. *Lesesne v. District of Columbia,* 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original); *see also Kingsmore ex rel. Lutz v. District of Columbia,* 466 F.3d 118, 120 (D.C. Cir. 2006). Without of evidence of harm to the student there is no substantive violation and thus no denial of FAPE.

Issue (2): Whether Respondent School A denied the student a FAPE by failing to review and/or revise the student's IEP as needed after new evaluations? Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence.

Pursuant to 34 C.F.R. § 300.324 (a) (1) In developing each child's IEP, the IEP Team must consider--

(i) The strengths of the child;

(ii) The concerns of the parents for enhancing the education of their child;

(iii) The results of the initial or most recent evaluation of the child; and

(iv) The academic, developmental, and functional needs of the child.

and the parent testified that on May 13, 2010, an IEP team convened and reviewed the student's most recent evaluations and the team was prepared as a result of the evaluation and the evaluator's recommendations to update the student's IEP and amend the student's disability classification. The meeting was not completed and the IEP amended because the parent wanted to obtain the representation of an advocate. There was credible testimony from that School A staff made repeated attempts to no avail prior to the end of

the school year to gain the parent's attendance to reconvene the meeting. Although there was no evidence that the attempts to reconvene the meeting met with all the requirements of 34 C.F.R. § 300.322, the Hearing Officer credits Ms. Booker-Ford's testimony that the parent had stated at the previous IEP meeting that she did not intend for the student to return to School A for the 2010-2011 school year. It was reasonable for School A staff to presume based upon the parent's expressed intent for the student not to return to School A and its inability to reach the parent for the meeting to not have been reconvened. Consequently, the Hearing Officer concludes that the evidence demonstrates that School A met the requirements of IDEA in reviewing the student's most recent evaluations at the May 13, 2010, IEP meeting and there was no denial of FAPE for a failure to review the student's recent evaluations.

Issue (3): Whether Respondent denied the student a FAPE by failing to appropriately determine a new placement for the student at the end of the 2009-2010 school year? Conclusion: Petitioner did sustain the burden of proof by a preponderance of the evidence.

Pursuant to 34 C.F.R. § 300.116 In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that-- (a) The placement decision--(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (2) Is made in conformity with the LRE provisions of this subpart, including Sec. Sec. 300.114 through 300.118; (b) The child's placement--(1) Is determined at least annually;(2) Is based on the child's IEP; and(3) Is as close as possible to the child's home; (Authority: 20 U.S.C. 1412(a)(5))

Pursuant to 34 C.F.R. 501(c) (1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child. (2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in Sec. 300.322(a) through (b)(1). (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. (4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

In this instance there was no official change of placement from School A made by an IEP team. Based upon the Ms. Booker-Ford's testimony there was nothing indicated at the team meeting that the student's IEP even with the recommended disability classification change from ED to SLD could not be implemented at School A. There was no official change of placement for the student initiated by a team such that the requirements of the provisions cited above came to effect.

Issue (4): Whether Respondent denied the student a FAPE by failing to allow the parent meaningful participation in the placement/program decision for the 2010-2011 school year? Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence.

Based upon the conclusions cited in the issue above this Hearing Officer concludes there was no placement decision made by the IEP team. The evidence clearly demonstrates the parent participated in the May 13, 2010, IEP meeting and at that meeting the student's placement was not changed. The evidence clearly demonstrates the student did not return to School A because the parent did not meet the reenrollment deadline in order for the student to continue to attend School A. Consequently this Hearing Officer concludes there is no denial of FAPE with regard to the any failure of the parent to have meaningful participation in a placement decision.

Issue (5): Whether Respondent denied the student a FAPE by failing to determine if the student was eligible for Extended School Year ("ESY") services for summer 2010? Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence.

Pursuant to 34 C.F.R. § 300.106 (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section. (2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with Sec. Sec. 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

At the student September 30, 2009, IEP meeting the team stated that it was too early to determine whether the student was in need of ESY services. testified that at the May 13, 2010, IEP meeting there was no discussion of ESY services because the meeting did not conclude because the parent wished to obtain the assistance of an advocate. Although the evidence reveals the student attended summer school at School A he did not receive ESY services during summer school. Although School A was required to make the inquiry and determination of whether ESY services were warranted in order to prevent regression of the student academic and social emotional gains, there was insufficient evidence presented that that the student was in need of the such services. There was evidence the student did not qualify for ESY services the previous summer at his previous school. Although the ESY determination is to be made each year, there was no evidence that the student was harmed by School A's failure to make the determination.

As previously stated under the law of the D.C. Circuit, a procedural violation of the IDEA is actionable only if it "affected the student's *substantive* rights" -- that is, only if the procedural violation led to a substantive violation. *Lesesne v. District of Columbia,* 447 F.3d 828, 834 (D.C. Cir. 2006) (emphasis in original); *see also Kingsmore ex rel. Lutz v. District of Columbia,* 466 F.3d 118, 120 (D.C. Cir. 2006). Without of evidence of harm to the student there is no substantive violation and thus no denial of FAPE.

Issue (6): Whether Respondent denied the student a FAPE by failing to comply with the "stay put" request and allow the student to attend School A for the 2010-2011 school year? Conclusion: Petitioner did not sustain the burden of proof by a preponderance of the evidence.

Pursuant to 34 C.F.R. § 300.209 (c), " If the public charter school is an LEA, consistent with §300.28, that receives funding under §300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity." As LEA Charter school School A has an obligation to implement the requirements of the IDEA for students with disabilities who are enrolled in its school.

Based upon the evidence presented that the parent did not timely reenroll the student in School A and at that at the time the complaint was filed the student was attending School C, this Hearing Officer concludes that the student did not have "stay put" rights at School A.

A public charter school is under no known obligation to convene a placement meeting to determine a placement for any student that does not reenroll in the charter school for the following school year. The evidence clearly demonstrates that by the time the parent submitted the enrollment documents on June 1, 2010, the slots for the eighth grade at School A had been filled. Although more conscientious efforts might have been made prior to the start of SY 2010-2011 to inform the parent that the student had not been effectively re-enrolled after she missed reenrollment deadline, but the School's lack of conscientiousness in this regard does not amount to a denial of FAPE.

The parent failure to timely reenroll the student in effect created a school transfer situation rather than any official change of placement that required any other action by School A under IDEA.

Pursuant to DCMR Title 5 Chapter E30 § 3019.5 Transfers between LEA Charters, District Charters, and DCPS shall be conducted as follows, whether the change in enrollment is initiated by the parent or results from the procedures established by DCPS for District Charters:

(a) If a child with a disability transfers from one LEA to another, the sending LEA shall provide a copy of the child's records to the receiving LEA, including any IEP for that child, within ten (10) days of receipt of notice of enrollment of the child in the receiving LEA.
(b) The sending LEA and receiving LEA shall cooperate fully in the transfer of all child records.(c) If a child transfers between an LEA Charter, a District Charter, or DCPS, after an evaluation or reevaluation process has begun, but prior to its conclusion, the receiving LEA shall be responsible for completing the evaluation process and fully implementing a resulting IEP in the event one is required. The sending LEA shall cooperate fully to ensure all relevant information follows a child to his or her new school. (d) Pursuant to 34 C.F.R. § 300.323(e), if a child with an IEP in effect transfers between an LEA Charter, a District Charter, or DCPS, the receiving LEA shall be responsible upon enrollment for ensuring that the child receives special education and related services according to the IEP, either by adopting the existing IEP or by developing a new IEP for the child in accordance with the requirements of IDEA.

Issue (7): If the denial(s) of FAPE is/are proved by Petitioner is the student entitled to compensatory education as relief and if so the type and/or quantity. Conclusion: The student is not entitled to compensatory education.

In *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005) the Court stated that "courts and hearing officers may award 'educational services . . . to be provided prospectively to

compensate for a past deficient program.'" Id. citing G. ex. Rel. RG v. Fort Bragg Dependent Schs., 343 F.3d 295, 309 (4th Cir. 2003). Compensatory education is an equitable remedy crafted to remedy educational deficit created by "an educational agency's failure over a given period of time to provide FAPE to a student'" Id. "Appropriate compensatory education must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have provided in the first place." Id.

In *Mary McLeod Bethune Day Academy Public Charter School v. Bland*, Civil Action No. 07-1223, the U.S. District Court for the District of Columbia found that, "if a parent presents evidence that her child has been denied FAPE, she has met her burden of proving that he is entitled to compensatory education."

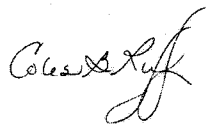
During the hearing Petitioner put forth no evidence of appropriate compensatory education had a denial of FAPE been proved. However, since there was no finding of a denial of FAPE to the student the student is due no compensatory education.

ORDER:

The complaint in this matter is hereby dismissed with prejudice.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 1415(i)(2).



Coles B. Ruff, Esq.
Hearing Officer
Date: November 1, 2010